

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

POINT PARK UNIVERSITY
Employer

and

6-RC-12276

NEWSPAPER GUILD OF PITTSBURGH/
COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 38061, AFL-CIO, CLC
Petitioner

NOTICE AND INVITATION TO FILE BRIEFS

The central issue in this case is whether the University faculty members sought to be represented by the Petitioner are statutory employees or rather excluded managerial employees, consistent with the Supreme Court's decision in *NLRB v. Yeshiva University*, 444 U.S. 672 (1980). In his original decision and direction of election, the Regional Director found that the faculty members were not managerial employees, and, after an election, the Petitioner was certified as their collective-bargaining representative. The underlying issue ultimately was presented to the United States Court of Appeals for the District of Columbia Circuit, which found that the Board had "failed to adequately explain why the faculty's role at the University is not managerial." *Point Park University v. NLRB*, 457 F.3d 42, 44 (D.C. Cir. 2006). The court instructed the Board to identify which of the relevant factors set forth in *Yeshiva University*, *supra*, are significant and which less so in its determination that the Employer's faculty are not managerial employees and to explain why the factors are so weighted. Following the court's remand, the Regional Director issued a Supplemental Decision on Remand. The Employer sought review of that decision, which the Board granted on November 28, 2007.

To aid the Board in properly addressing the court's remand, the Board invites the parties and amici to file briefs that address the court's instruction that the Board explain the weight of the various factors identified by the Supreme Court in *Yeshiva* and their application to this

case.¹ Specifically, the briefs should address some or all of the following questions:

(1) Which of the factors identified in *Yeshiva* and the relevant cases decided by the Board since *Yeshiva* are most significant in making a finding of managerial status for university faculty members and why?

(2) In the areas identified as "significant," what evidence should be required to establish that faculty make or "effectively control" decisions?

(3) Are the factors identified in the Board case law to date sufficient to correctly determine whether faculty are managerial?

(4) If the factors are not sufficient, what additional factors would aid the Board in making a determination of managerial status for faculty?

(5) Is the Board's application of the *Yeshiva* factors to faculty consistent with its determination of the managerial status of other categories of employees and, if not, (a) may the Board adopt a distinct approach for such determinations in an academic context or (b) can the Board more closely align its determinations in an academic context with its determinations in non-academic contexts in a manner that remains consistent with the decision in *Yeshiva*?

(6) Do the factors employed by the Board in determining the status of university faculty members properly distinguish between indicia of managerial status and indicia of professional status under the Act?

(7) Have there been developments in models of decision making in private universities since the

¹ On December 12, 2007, the Employer filed a brief on review of the Regional Director's Supplemental Decision on Remand. The Petitioner did not file a brief on review. Given the amount of time that has passed since the request for review was granted and the absence of a Brief on Review from the Petitioner, the Board has decided to solicit additional briefing. We acknowledge, as our dissenting colleagues point out, that this case has suffered from considerable delay already. However, given the nature of the D.C. Circuit's remand of the case, we believe that allowing a short period of time for additional briefing will aid the Board in deciding the important issues at stake.

issuance of *Yeshiva* that are relevant to the factors the Board should consider in making a determination of faculty managerial status? If so, what are those developments and how should they influence the Board's analysis?

(8) As suggested in footnote 31 of the *Yeshiva* decision, are there useful distinctions to be drawn between and among different job classifications within a faculty--such as between professors, associate professors, assistant professors, and lecturers or between tenured and untenured faculty--depending on the faculty's structure and practices?

In answering these questions, the parties and amici are invited to submit empirical and other evidence.

Briefs not exceeding 50 pages in length shall be filed with the Board in Washington, D.C. on or before July 6, 2012. The parties may file responsive briefs on or before July 20, 2012, which shall not exceed 25 pages in length. No other responsive briefs will be accepted. The parties and amici shall file briefs electronically at <http://mynlrb.nlrb.gov/efile>. If assistance is needed in filing through <http://mynlrb.nlrb.gov/efile>, please contact Lester A. Heltzer, Executive Secretary, National Labor Relations Board.

MARK GASTON PEARCE, CHAIRMAN

RICHARD F. GRIFFIN, JR., MEMBER

SHARON BLOCK, MEMBER

Members Hayes and Flynn, dissenting:

We dissent from the majority's decision to solicit additional briefing now, nearly 5 years after the Board granted the Employer's Request for Review of the Regional Director's Supplemental Decision on Remand. An amicus brief has already been filed in this case by the American Council on Education ("ACE"), the National Association of Independent Colleges & Universities ("NAICU"), the Council of Independent Colleges ("CIC"), and the Association of Independent Colleges & Universities of Pennsylvania

("AICUP"), which collectively represent virtually all institutions of higher education. After the Board granted review in November 2007, the Petitioner did not avail itself of its opportunity to file a brief. Further, no additional organizations have asked to participate as amici during the lengthy pendency of this case despite the publicity surrounding it.² Under these circumstances, we find it unwise to further delay the processing of this case to solicit additional briefing.

BRIAN E. HAYES, MEMBER

TERENCE F. FLYNN, MEMBER

Dated, Washington, D.C. May 22, 2012.

² See NLRB's Weekly Summary of Cases, dated December 7, 2007, reprinted in Daily Labor Report, E-1 (Dec. 7, 2007) (summarizing Board's grant of review of the Regional Director's Supplemental Decision on Remand); *NLRB Failed to Adequately Explain Ruling on Faculty Status, Appeals Court Decides*, Daily Labor Report (Aug. 2, 2006); Bill Schackner, "College Dispute Returned to NLRB, Point Park Faculty Seek to Join Union," *Pittsburgh Post-Gazette* (Aug. 2, 2006).